SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA BARBARA
SANTA MARIA BRANCH; COOK STREET DIVISION
DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
Plaintiff,)
-vs-) No. 1133603
MICHAEL JOE JACKSON,)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, JUNE 1, 2005

8:40 A.M.

(PAGES 12609 THROUGH 12717)

REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304
BY: Official Court Reporter 12609

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1 E X H I B I T S
2 FOR IN
PLAINTIFF'S NO. DESCRIPTION I.D. EVID.
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4 910 Portions of Bashir documentary that the Court
5 found to be admissible as admissions 12624 12624
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Santa Maria, California
Wednesday, June 1, 2005
8:40 a.m.

(The following proceedings were held in open court outside the presence and hearing of the jury:)

THE COURT: Good morning.
MR. SANGER: Good morning, Your Honor.
MR. SNEDDON: Good morning.
THE COURT: Let's see, would you -- would counsel approach, here?
I'll just give you a couple minutes to read the instructions I just handed you.
Have you had time to read those?
MR. SANGER: Yes, Your Honor.
THE COURT: Mr. Sneddon?
MR. SNEDDON: Yes.
THE COURT: Well, I'm sure glad we stopped yesterday. That was exhausting. It's amazing how things look different the next morning, huh?
Okay. Number one, I'm going to take some items up that are hanging loose here. Number one is that the special instruction requested by the District Attorney re the definition of "property" as being "something of value," I'm going to give that instruction. 12612

For your purposes, I'm placing the instruction in the package to the jurors following CALJIC 14.70.
Number two --
MR. SANGER: And, Your Honor, just so the record is clear, I think we objected to this yesterday, but we definitely object to it.
THE COURT: Okay. The record's clear. You definitely object to it.
MR. SANGER: All right. Thank you.
THE COURT: Number two, D.A.'s proposed CALJIC 3.30 re general criminal intent, it appears that the D.A.'s proposed 3.30 is adequate, furnishing alcoholic beverage as a lesser-included. I'm going to give that and place it after 16.010. That's in the package I -- the next one is in the package that I gave you on false imprisonment.
MR. SANGER: Yes, Your Honor. I don't think we got the 3.30 for furnishing, the one you just referred to. We do have the one on false imprisonment. Maybe I'm wrong on that.
THE COURT: It came down -- the District Attorney -- I had ordered them to prepare it and bring it to my office. And they did. I assumed they would give you a copy of it. Did you give them a copy of it?
MR. SNEDDON: Your Honor, I can't tell you that, because Mr. Franklin did all that, and when he 12613

left, he went directly back to Santa Barbara. So I guess if they didn't get it, I would assume that he did not do that.
THE COURT: Well, he gave me three or four instructions yesterday afternoon.
MR. SNEDDON: I'm -- I know he did, because he was called back. And -- but I was not in communication with Mr. Franklin after that. And I know he went back to Santa Barbara.
THE COURT: Why isn't he here today?
MR. SNEDDON: Because he has a brief due with the California Supreme Court.
THE COURT: Oh. You got him here as being your representative on instructions, you know.
MR. SNEDDON: I got him here to carry my briefcase. But I apologize, Judge, I just didn't know. These are not --
THE COURT: How do I know what ones you --
MR. SNEDDON: I think you should assume that whatever Mr. Franklin did for the Court and gave extra copies of did not get to Mr. Sanger. I think that would be a fair assumption.
MR. BEEBE: Here's another copy.
MR. SNEDDON: I understood there was only two, perhaps three.
THE COURT: What's the another one?
MR. SANGER: The only one that we received, Your Honor, was the "property" or "something" -- and 12614

1 “something of value” defined.
2 MR. SNEDDON: I know he did 3.31. The
3 mental state one he came back and did. And there
4 was one other that the Court requested he come back
5 and do.
6 MR. SANGER: I think we got “property” and
7 “something of value” yesterday. I think he brought
8 this back yesterday before the end of the day while
9 we were still in court. But we did not receive
10 anything else.
11 I don’t want to pick on Mr. Franklin. He
12 was, I’m sure, trying to do his best, but we just
13 haven’t seen them. So if we could have a copy, I’d
14 appreciate it.
15 THE COURT: What were the other ones? He
16 did 17.01.
17 MR. BEEBE: 3.31 and 3.31.5, and the
18 property one.
19 MR. SNEDDON: I think it’s the mental state
20 one.
21 MR. BEEBE: Yeah.
22 THE COURT: And what number was that; do you
23 know?
24 MR. BEEBE: I think it’s 3.31.5.
25 MR. SNEDDON: So that would be 3.31.5.
26 THE COURT: Okay.
27 MR. SNEDDON: I know that one for sure. And
28 I think there was one other, which may have been the 12615

1 lesser-included, 17.00.
2 THE COURT: What was the long one we had him
3 filling in all those blanks? Do you remember?
4 MR. BEEBE: That was 6.23.
5 THE COURT: And give it to Mr. Sanger and
6 then give it back to me.
7 What was the other one?
8 MR. BEEBE: 6.23.
9 THE COURT: Okay.
10 MR. SNEDDON: I believe that one was
11 actually delivered to the Court and I think Mr.
12 Sanger has a copy of that one.
13 MR. SANGER: Yeah.
14 MR. SNEDDON: It was delivered before we
15 left yesterday.
16 MR. SANGER: That was delivered yesterday
17 during the day while we were in session, changing
18 the --
19 MR. SNEDDON: Font.
20 MR. SANGER: Changing whether it was capped
21 or not capped. We got the final version of that, so
22 we're okay on that one.
23 Okay. So we now have 3.30 on the
24 furnishing, misdemeanor. And I think the Court's
25 ruled that comes in.
26 And we have 3.31.5 on mental states, and we
27 will submit on that.
28 And then we have the "property" and 12616

"something of value," which we got yesterday, to which we objected and the Court accepted it. And then we have 6.23, which changed the capitalization.
So are there any others that we're missing?
THE COURT: Probably, but I don't know. I have a feeling there's one more, and I'm trying to remember which one it was.
MR. SANGER: I heard somebody say 17-something.
THE COURT: I said that.
MR. BEEBE: 17.12.
THE COURT: I'm thinking of the one that had all of the blanks in it that we asked them to prepare. Maybe Tracy remembers.
MS. SPLITGERBER: That was, I think, 17.12.
THE COURT: 17.12.
MR. SNEDDON: That's my recollection. It was something in the 17.00 series, and I think that's the one.
MS. SPLITGERBER: And they did do it, and I think the copy was in the packet that you handed out, the copy of what the D.A. prepared.
THE COURT: You got that copy?
MR. SANGER: You gave us that this morning, 17.12.
THE COURT: Okay. What I want you to do, then, is come up and get these. There's two more 12617

here. These are minor changes.
On that, I just changed the heading. I took the heading off. I'll show you the -- this is what it said before.
MR. SANGER: Yes.
MR. SNEDDON: Okay.
THE COURT: Then the next one, I gave you a proposed C, and now I'm giving you a different proposed C. And the only difference is in this line here, "identified as People's Exhibit 910," instead of "as an addendum," which it previously said.
MR. SANGER: Very well. Thank you.
THE COURT: That's in the package I gave you this morning.
MR. SANGER: And we do want to be heard on that.
THE COURT: We're going to go through all this. I'm just -- we were starting to go through all of this.
MR. SANGER: All right.
THE COURT: All right. The next thing, we had just finished discussing 3.30 on the furnishing alcoholic beverage lesser, and I told you I would put it behind -- well, following CALJIC 16.010. The next one is the instruction as it relates to false imprisonment.
MR. SANGER: Yes. Could I be heard on that, Your Honor? 12618

THE COURT: Yes.
MR. SANGER: I'll stand up so I get a little exercise here this morning.
I have a suggestion on that one that I think will help, and we'll see.
I would propose that there be a second paragraph added to that that says, "However, before a person can be convicted of conspiracy to commit false imprisonment, the specific intents to commit conspiracy must be proved."
And I think that's -- I could have made it more elaborate, but I think that would help the jury not to get confused when they're being told "specific intent," "specific intent," and then all of a sudden "general" on one of the conspiracy counts. And I wrote it out, if the Court would like to have what I just read.
THE COURT: Okay.
MR. SANGER: Mr. Sneddon?
THE COURT: Do you have it? This is that area that's -- it's a difficult area. So that repeats another instruction, but I don't see any problem with giving it at that point, just to -- because it is a tricky area.
MR. SNEDDON: I don't have a problem with that, Judge.
MR. SANGER: May I approach? Or just --
THE COURT: Would you just give it to -- 12619

MS. SPLITGERBER: Thank you.
THE COURT: I think if you send that over to Carrie....
MS. SPLITGERBER: I'll take it.
THE COURT: Then the -- number three, 17.12, as it has been prepared, seems -- this is the one that the District Attorney -- it's a standard CALJIC instruction, but there were a lot of blanks in it, so I had them fill in the blanks for us. It looks all right to me.
Have you looked at it?
MR. SANGER: I have looked at it. Obviously I haven't compared every word, but it looks correct.
THE COURT: Okay.
MR. SANGER: However, could I just briefly be heard --
THE COURT: Yes.
MR. SANGER: -- on that?
I don't want to -- it seems the Court is committed to giving the lessers, but having done a little more research on it last night, it does appear that the standard would be that you cannot commit the greater without committing the lesser. And the greater involves anyone. The lesser involves a minor. So you can commit the greater without committing the lesser.
And of course there's the issue of furnishing versus administering. I believe that 12620

Mr. Sneddon yesterday -- and I don't know if he actually said it loud enough to be on the record, but said something to the effect that if it's substantially the same, it's acceptable. And whether he said it on the record or not, that seems to be the Geiger standard for lesser-relateds.
THE COURT: You mean you listen to what he whispers to his colleagues?
MR. SANGER: He wasn't whispering. It was, at the very least, a stage whisper, if it wasn't said loud enough for the record. I don't know if it got on, but I couldn't help but hear it. The point being -- whether the Court heard it or not, the point being the Geiger case was overruled. That was the lesser-related standard. And that was only at the request of the defense. So I'm not going to argue it further.
I think the Court has in mind what the law is, but I do think that it would be incorrect to let in the lesser. I realize that would result in some revision of jury instructions at the last second, but --
THE COURT: Well, that's not the issue, but, you know, we're here. As you see, we're changing jury instructions as we speak. So it's not a hardship on the Court to change the language in a jury instruction.
MR. SANGER: Especially if you're deleting 12621

some of them. I suppose that would be a good thing.
THE COURT: Well, getting to the point,
there's two mandatory -- I'm sure you've read this
Mandatory Criminal Jury Instruction Handbook. And
on page III, D.[1.7], "Lesser Offenses to Offense
Charged," there's two approaches that you have to
look at. One is the legal elements test, which
you've been discussing, and the other one is the
accusatory pleading test.
And when you look at the language in the
indictment, you find that the accusatory pleading
test, if you follow that, is the test that mandates
that I give the lesser-included.
MR. SANGER: I think that would answer the
second part, which is minor versus anyone, because
the accusatory pleading would give notice of a
minor.
THE COURT: Right.
MR. SANGER: And I think that's what the
Court's referring to. But the furnishing versus
administering I think is still an issue.
THE COURT: It seems that you would have to
furnish to administer or -- it doesn't seem, to me,
to be a --
MR. SANGER: There's --
THE COURT: Anyway, yes, I've decided to give
the lesser-included.
MR. SANGER: Okay. 12622

THE COURT: And here's the changed 330, 3.30.
MR. SANGER: I'll bring it back if you want.
THE COURT: And that should go in the material -- what's the number of the instruction on false imprisonment?
MR. BEEBE: 9.70?
THE COURT: Yeah, here it is, 9.60. 9. -- so I'm going to put it right behind 9.60.
Then I do not have a clean copy of 17.12.
Does someone have a --
MS. SPLITGERBER: Yes, Carrie does.
THE COURT: Okay. I need that.
MS. SPLITGERBER: All right.
THE COURT: Number four, let's see, we covered that, the furnishing alcohol to a minor.
Number five, the Court's proposed instruction C and C-1 on the various use of the videos. What I'm proposing to do here is to instruct with the Court's proposed C and put that after 2.09, "Evidence limited as to purpose."
The thing that's -- and I did receive your points and authorities this morning. And I agree with your points and authorities on use of the outtake language. You know, it's clear that -- that's why I admitted the outtake footage was to give a complete context of everything that was said. But the case you cited doesn't stand for admitting it for the truth of the matter asserted. I think it 12623

stands for what we thought, is that you admit that for what other purpose you admitted the main body of material.
So it's a good citation, but it's -- it doesn't change my approach. My approach is outlined in Instruction C.
MR. SANGER: I do have a comment on that whenever the Court's ready.
THE COURT: Yes. Before you comment, let me explain something so you get -- maybe you have the complete picture, maybe not, but I want to be sure you do.
So, initially the -- well, I'm beginning to think like you. I was going to explain all of the side stuff before I got to the point. It's time we end this, you know.
I'm going to go to using an exhibit, which I've marked as People's 910, and that contains the material that they prepared at my request, which is the material that they are going to maintain to the jury is an admission.
And by using an exhibit of the People -- I had originally placed it as an appendix to the instruction, but I think that makes the connection to the Court that I don't want to make; that it's not me that's proposing that these are admissions.
I have to make some preliminary determination, but not final, and I don't think they need to know that 12624

I have to make some preliminary determination. So the D.A. needs to say, “These are” -- in his argument, he’ll say, “These are things that we urge you to believe are admissions by the defendant.” Then I have -- the exhibit is referenced, so that the jury can, if they choose to, look at it, or if the D.A. chooses to, can show the jury this exhibit, which is the admissions you are claiming. But at any rate, they have something specific to relate this instruction to.

And on Instruction C-1, it’s really the standard admission instruction, but I have pinpointed it to -- with the paragraph in the middle that refers them to Exhibit 910, and then reiterates again that they are the exclusive judges as to whether or not there are admissions.

So that’s my proposal for covering the admission part of this video.

Now you may speak.

MR. SANGER: At my peril, evidently, but I will.

On Exhibit C, first of all, I would propose to modify it in paragraph four that says “the outtakes video.” If you go to the second sentence -- let me tell the Court what I propose to modify and then explain why.

THE COURT: Yes.

MR. SANGER: I propose to say -- instead of 12625

"none of," take that out and say, "The statements in the outtakes video may be considered for their truth," and then strike the rest of it and say, "If they are on the same subject matter as the statements offered by the People in Exhibit 910."
And conveniently, your modification to put the reference to Exhibit 910 in the very latest version makes that work conveniently.
Now, having said that, the argument is --
THE COURT: Just a moment. Let me make sure I understand that.
MR. SANGER: I can say it again, if that helps.
THE COURT: Well, I'm reading it.
Okay. So the proposal is, instead of "none of," it will say -- it will start out with, "The statements in the outtakes video may be considered for their truth."
I see. It's covering -- there's actually -- I've taken a sentence that was covering another subject, which is that in any of -- either the outtake or the Bashir video, if the same -- they show the same scenes. Some of the scenes are the same. Some of the outtakes are the parts that the Bashir video uses, so the words are the same. So to the extent that those are the same words in both videos, if those -- then that's what that sentence is meant to say, that they would be admitted for the

truth of the matter asserted, if they're on this list.
Now you want to cover the second problem, which is, "What parts of my statement that I want to introduce can be taken for the truth of the matter asserted"?
MR. SANGER: That's correct. And I think, given Evidence Code Section 356 that says "on the same subject," so we've taken the same language there, "If they are on the same subject as the statements offered by the People in 910."
Now, I understood, from the Court's comments earlier, that the Court apparently is not reading 356 to say that statements on the same subject come in for the truth of the matter. In the Douglas case that we cited, where it says --
THE COURT: No, they would be -- you're not understanding what I said.
356 and the Douglas case do not stand for the proposition that if I admit statements not for the truth of the matter asserted, and you want to connect statements to that, that they get to go in for the truth of the matter asserted.
MR. SANGER: Okay.
THE COURT: You are not maintaining that --
MR. SANGER: I would agree with what the Court said. I'm talking about the statements in Exhibit 910. So if -- 12627

THE COURT: Okay. So I'm not saying what you thought -- what you accused me of saying.
MR. SANGER: All right. Good.
THE COURT: All right. So the issue is -- I agree with you that if part of the admission is not given, if the part of the statement, the context of the statement is not given by the District Attorney and there's more to that statement, then that should be considered for the truth of the matter asserted also as part of the statement. If there's an admission there and it comes in for the truth of the matter asserted, then any part of that statement that was excluded by the D.A. should also come in with the same understanding.
MR. SANGER: If it's on the same subject matter.
THE COURT: If it's part of that statement. See, what --
MR. SANGER: The way I look at it -- I understand what the Court's saying.
THE COURT: Here's the problem that I see with your position, is that there's a whole lot of discussion about children by Mr. Jackson. And if the subject matter you're saying is "children," then my answer to you is no, that's too broad of a subject matter.
MR. SANGER: Well, okay. And I understand that's the answer. If that's the ruling, I won't 12628

argue with it, but if you're inviting discussion on it --
THE COURT: I'm inviting discussion.
MR. SANGER: -- it seems to me this comes up all the time, and you'll have typically a letter or a writing or a statement made to the -- to the police by a defendant. Somebody's arrested, they're given the Miranda rights, and they sit down and they talk about the case, and the prosecution comes in and says, "Ahh, we want to take this statement and that statement and we want to say that's an admission."
You're allowed to play the entire tape and the jury's entitled to consider the entire tape. It happens all the time. The entire tape of the police interview. And they can consider it for the truth of the matter asserted.
Now, I suppose -- and I must say, I can't remember anybody ever doing this, but I suppose it could happen that there could be a discussion on the tape about something that's totally irrelevant, and the prosecution could say, "Well," you know, "you can't have that," because they're talking about," you know, another event or something totally unrelated to the case, but otherwise the whole -- the whole tape comes in, and it happens all the time. Same thing with a letter. The whole letter comes in as long as it's the same subject matter. 12629

And so what you have here is you have a series of tapings and interviews by Bashir that take place during the latter part of 2002, on into the early part of 2003, in January 2003, and Bashir clips from these various interviews snippets that he puts into his production.

Some of those actual conversations Mr. Moslehi did not have -- he wasn't there, nor did he have a camera running to tape-record the rest of what was said during that period of time. We're stuck with what Mr. Bashir has pulled out to put in his video. However, the rest of it is one big ongoing conversation with Michael Jackson, and he does take clips from the other -- from the other tapes.

So I believe that -- and I'm disagreeing with the Court directly, but I believe that anything that's in 910 that is put in context or involves the same subject matter that's on these tapes is fair game for the jury. Now --

THE COURT: And the Bashir tape should come in for the truth of the matter asserted because it's all on the same subject matter.

MR. SANGER: Well, no, actually there's an argument -- there would be an argument by the District Attorney that anything that Michael Jackson said on the same subject matter on that tape could come in. And I think that that's true. If Michael

Jackson said it on the Bashir tape, and it pertained to the subject matter of children, it could be considered. I think that that's basically the -- I suppose you could put a sentence in to that effect as well.

And it really takes us back -- I hate to say, but it does take us back to the initial approach where I suggested that on both the Bashir tape and the outtakes, that any statements -- I don't have it in front of me here, but I provided in writing, any statements by Mr. Jackson on the subject matter of his relationship with children can be considered by the jury for the purpose of determining whether or not it's an admission, and it can be considered for the context of any such alleged admissions.

See, if we try to parse it -- I mean, I do agree with the Court --

THE COURT: I understand your argument.

MR. SANGER: I do agree with the Court that the other statements by Mr. Jackson would come in, but not the whole Bashir tape.

THE COURT: All right.

Do you want to be heard, Mr. Sneddon, on this?

MR. SNEDDON: Only if the Court's going to entertain this change, because I think it substantially changes the situation that we all 12631

operated on from the very first day that this trial started.
THE COURT: The --
MR. SNEDDON: I believe Mr. Sanger is wrong, I believe the Court's analysis is correct, and I think the instruction correctly states the state of the law and the state of the evidence in this case and should be given just as you proposed it.
THE COURT: I'm going to give it as I proposed it, with this caveat, and I've invited you to do this before: If there is specific -- that's why, by the way, I asked him in the beginning to provide us with the statements that he asserted were admissions, was so that you could look at those areas and see if you wanted to show me, and then the jury, that, "Wait a minute, he's taken this out of context. What was being discussed at that moment, here's the whole discussion at that moment, at that minute," not at that day or hour or -- you know. So I feel I've given you the opportunity to do that. And that was specifically the reason I --
MR. SANGER: As I indicated yesterday, we had marked the transcripts of the outtakes to show the portions that we believe are --
THE COURT: You --
MR. SANGER: But I'll tell the Court in advance, they are substantial. So if the Court's saying limit it to the minute -- 12632

THE COURT: Yeah, it's the same thing you're saying, and that's not what I'm willing to accept. I know you're not missing my point.
MR. SANGER: Okay.
MR. SNEDDON: Judge, I was just going to make a comment about that. It's my recollection -- and Mr. Sanger and I disagree on this, but you have the transcript. It's my recollection that the outtakes end before the substantial part of the discussion that are the subject of what would be People's Exhibit --
THE COURT: I know you asserted that before, and I don't have to make that determination because it's up to Mr. Sanger to bring up those points and, if he wants to bring them to my attention, to do so.
MR. SNEDDON: Okay.
THE COURT: So as -- with your noted objection and reasoned argument, I will go ahead and give Instruction No. C and C-1, and I'm going to put the limiting instruction after 2.09 in the total package.
And then 17.12 --
MR. SANGER: Your Honor, where did you say C and C-1 go, if you recall?
THE COURT: It goes after 2.09.
MR. SANGER: All right. Thank you.
THE COURT: And did I tell you I placed 17.12 in front of 16.010? 12633

Now, the next item will be should 17.01 be given when you consider 4.71.5 and 17.02?
MR. SNEDDON: Your Honor, what was the first one, 4 what?
THE COURT: 4.71.5.
17.02 says, “Each count charges a distinct crime. You must decide each count separately.”
17.01 says, “The defendant is accused of having committed the crime of lewd act upon a child under 14 in Counts 2 through 5,” and then it goes on with the others. “The prosecution has introduced evidence for the purpose of showing that there is more than one act upon which a conviction may be based.”
So I’m asking you, do you need both of those instructions?
MR. SANGER: Well, 17.02 does not cover the subject matter in 17.01. And I’m looking at 4.71.5, and the problem with 17 -- I’m sorry, the problem with 4.71.5 is that that’s really related to a time period.
THE COURT: Uh-huh.
MR. SANGER: And it’s not related to the actual proof of the particular acts, and I think 17.01 does in fact address --
THE COURT: Different --
MR. SANGER: -- the issue.
Now, we submitted Special No. 3, which the 12634

Court was thinking about giving, and then -- which attempted to cover the same issue.
THE COURT: Uh-huh.
MR. SANGER: And I think that issue has to be covered directly. 17.01 seems to be a more direct instruction on that subject matter. I don't think the others really are -- really address it.
The only thing I'd add is I think Count 6 has to be in there, too, because even the Court had to ask the prosecutor, "What was your contention as to Count 6?"
THE COURT: Well, I guess the question I would have is -- to the District Attorney is, under 17.01, we have Counts 2 through 5, lewd acts, and Count 7 through 10, administering an intoxicating agent. And then we say that the -- all jurors must agree upon the same act or acts, which is what was covered in No. 3 Special, somewhat, that Mr. Sanger submitted.
And I guess I would ask the District Attorney, what are the acts in Counts 2 through 5 that you're depending on, if you care to tell me?
MR. SNEDDON: Well, sure.
THE COURT: And -- okay.
MR. SNEDDON: I mean, I don't think there's any mystery as to this. The -- two of the counts are the incidents as viewed by Star Arvizo.
THE COURT: Right. 12635

MR. SNEDDON: And the other two counts are the two counts that were testified to by Gavin Arvizo.
THE COURT: I agree. That's what I -- I don't think there's a mystery about that either. But which one is on which count?
MR. SNEDDON: Which -- as to which count? Well, that's --
THE COURT: That's the mystery.
MR. SNEDDON: Well, it's not a mystery, but it's not delineated, that's correct. In reading the use notes under 17.01, it does look that 17.01 is directed to those situations where there is a singular count but multiple acts upon which the jury could derive a verdict of guilty on the singular count. I think that's somewhat different than the situation that we have here.
THE COURT: I don't think so.
MR. SNEDDON: Well, I was going to say, I don't see -- I don't see a particular problem in giving both, if the Court wants to give both.
THE COURT: The reason I don't think it's different is as to each count there are multiple acts that could be attributed to that count.
MR. SNEDDON: Because they're not delineated.
THE COURT: Because they're not delineated.
MR. SNEDDON: All right. I -- I think 12636

that's correct. I think perhaps -- yeah. I mean, I don't have a problem with giving the instruction. I just think that our problem with the special given by the defense was the particular set of facts, and I indicated to the Court yesterday where I saw that to be a problem. So --

THE COURT: Well, it actually -- their language isn't much different, when you look at it, than 17.01. "All jurors must agree that he committed the same act or acts."

MR. SNEDDON: To me, that's substantially different than a particular set of acts, but it encompasses the entire -- it encompasses more than the commission of the crime as defined by the Court. And to me, that's -- to me, that's substantially different, and particularly it's -- it eliminates the mischief that can be made from arguing the kind of thing that I pointed out to the Court. So if you're asking me whether I think we should give 17.01, I see no problem in giving both of them.

THE COURT: I guess I'm asking you one thing further, and that is, are you going to tell the jury that Count 2 is when Star saw him the first time, Count 3 is when Star saw him the second time, and Count 4 is when Gavin said he was first touched, and Count 5 is when he was -- you know, I don't want to --

MR. SNEDDON: I have -- let me put it this

way, Your Honor: I don't think we specifically intended to do that in relating one to the other, only because they're not mentioned. However, if the Court is inviting us to make that election, and there's no -- there's no objection from the defense, we have no problem doing that. I just think to do that in the middle of the argument, without prior approval of the Court or counsel for the defense, would be not right.

But if you're asking me to make an election, that's a very simple thing for us to do, and if counsel for the defense wants us to do that, and I believe it would probably help the jury in their deliberations, I'm more than glad to make that election right now.

THE COURT: And --

MR. SNEDDON: And you can put that in the verdict forms if you wanted.

THE COURT: And the same would be true on the Count 7 through 10.

MR. SNEDDON: On the alcohol.

THE COURT: The alcohol.

MR. SNEDDON: Yes, sir.

THE COURT: Do you wish to be heard, Mr. Sanger?

MR. SANGER: Yes. That is a point I wanted to raise before we are through, so -- I think the election should be made, and the problem we have is 12638

there is a good instruction, 6.23, on conspiracy that lays out exactly what the charges are there, and then there's really nothing else. There's the introductory -- well, it's one -- I don't have the number right here, but it's one of the first few where you talk about what the charges are, and they just list the charge by name. And then when you have the actual substantive charges on lewd act, 10.41, for instance, and the other substance, it simply says the defendant's charged. Nothing ties it to particular acts.

THE COURT: But if we make him -- accept his --

MR. SNEDDON: Offer.

THE COURT: -- offer to make an election, then -- and to tell the jury in his argument the election, then I think we -- that takes care of that problem.

MR. SANGER: I think that that would take care of it. The other way to do it would be to instruct on it, or --

THE COURT: I think I'll -- because we're pushing this, I think I'll go with the election.

MR. SANGER: We want to make sure we know exactly what the election is.

THE COURT: He's going to do that right now.

MR. SANGER: Okay.

THE COURT: And then we can discuss -- he is 12639

willing to have it as a finding in the verdict also.
Would you like that?
MR. SANGER: I'd have to see what it looks
like. I get concerned about verdicts being too
factual.
THE COURT: We can discuss that. And it
doesn't have to be in the argument.
MR. SANGER: That's correct.
THE COURT: All right. Would you make your
election and --
MR. SNEDDON: Count 2 would be as to Gavin
Arvizo. Count 3 would be as to Gavin Arvizo. Count 4
would be the same victim, but the observations made
by Star Arvizo. And Count 5 would be the same
victim, but the observations made by Star Arvizo.
With regard to the intoxicating -- the
violations of 222, they would just mirror them. So
the first two would be as to -- well, the first two
would be as to those incidents, as to Count 2 and to
Count 3, and the last two would be as to Count 4 and
to Count 5.
THE COURT: Can you define the two --
you've -- now you've got it down to two. You still
have an ambiguity, which -- is there something you
can say further to select that Count 2 is as to
Arvizo -- as to Gavin is this, and Count 3 is that?
Is there some language?
MR. SANGER: First in time and second in 12640

time.
THE COURT: First in time, second in time?
MR. SNEDDON: I would not be willing to go that way. Because I don't think there's any -- the state of the evidence at this particular point is open to the jury to make that decision on their own basis.
THE COURT: But if they decide --
MR. SNEDDON: I don't think that's why we alleged --
THE COURT: That's not that clear. Is that what you're saying?
MR. SNEDDON: I'm saying the jury has the option. His statement over and over again has been it was towards the end, and so I'm not prepared to say that one was before the other, and I don't think we even have to.
And I am willing to say that, you know, the first two were based upon -- solely upon -- or based upon the testimony of Gavin Arvizo and the last two were based upon the testimony of Star Arvizo, and I think that makes it very clear for the jury during that time period that that's exactly what we're talking about.
THE COURT: Okay.
MR. SNEDDON: And if --
THE COURT: And will you have the person arguing your case -- 12641

MR. SNEDDON: State that?
THE COURT: -- state that at some point in their argument?
MR. SNEDDON: Yes, sir. I think -- I think it's also important, however, at some point in either in the verdict forms or in the instructions that that also come from the Court.
MR. SANGER: Before we get to that -- go ahead.
MR. SNEDDON: And I really feel that it ought to be in the verdict forms. I really feel that if we're going to make this kind of election and we're going to tell this jury, "This count applies to this and this count applies to this," that to simply have somebody get up and state in final argument, "This is our election," doesn't help the jury.
THE COURT: You don't have to say it's your election. You can say, "This is what we're maintaining."
MR. SNEDDON: I understand that. But what I'm saying is, I think the jury needs the direction that that is, in fact, what the verdict forms reflect.
MR. SANGER: I do have a suggestion on this when we get --
THE COURT: Yes.
MR. SANGER: I don't want to cut off Mr. 12642

Sneddon.
THE COURT: Yes. Let me hear your
suggestion.
MR. SANGER: My suggestion, first of all, is
if you take 1.06, that's where it's the
identification of the parties and the crimes
charged, and we use that instruction to simply add
some language after the description of the crime
charged -- in other words, it says, "Lewd act upon a
child," and you can say "to wit," if you want to be
archaic about it, but something to that effect, and
then indicate in brief form what Mr. Sneddon said.
Now, I do have a problem with the concept
that the jury can pick and choose even between the
two sets of -- or within the two sets of charges.
So I want to be heard on that --
THE COURT: No, go ahead now.
MR. SANGER: Just procedurally, first of
all, I think we can add the words right there in
that 1.06 and that should clarify for the jury
entirely. They have 6.23 to clarify the conspiracy,
and then they would have this to clarify the rest.
Now, on the substantive part, I don't
believe that, consistent with the case law that
we've been discussing, that the prosecution can say,
"Well, we have" -- "We have two or more acts, and
they could have occurred, and we don't know which
one is which." And if the prosecution can't even 12643

tell the jury which one is which, the jury certainly can't discharge its duties, under Blakely, to determine beyond a reasonable doubt whether or not a person is guilty of that offense.
So if we're going to honor the commitment which I think is reflected in 17.01, that the jury has to actually decide on a -- on an act or acts for a particular count, somebody's got to delineate what those acts are. And it's not close enough to say, "Well, there are two things that Gavin may have testified to, two or more, and there's two or more that Star may have testified to seeing, and that's close enough for government work."
I think we have to make it very clear. My recollection of the testimony was that there was an effort on the part of the prosecution to bring out from Gavin that there was a first instance and a second instance. He was vague about it. Clearly -- I'm clear in my recollection with regard to Star's testimony, that he testified there was a first instance and a second instance. So I don't see why the prosecution should not be held to that. I mean, the jury can't simply say, "Well, we kind of think something may have happened on some day or another." That's exactly what the problem is that we're addressing.
THE COURT: What was the language --
MR. SNEDDON: I think my remarks were 12644

misconstrued.
THE COURT: What was the language that you thought you could add in 1.06 that --
MR. SANGER: I would say, for instance, if you go down 1.06 where it says, “In Count 2, the crime alleged is lewd act upon a child,” and then you -- I said, “to wit,” but you could say instead, “The act alleged is the first act alleged to have occurred in the testimony of Gavin Arvizo.” I think we have to also say Gavin Arvizo is the “alleged” victim.
And then Count 3 would be the second act alleged in the testimony of Gavin Arvizo. 4 would be the first act alleged in the testimony of Star Arvizo regarding Gavin, or however the Court wants to put it. I’m trying to keep it short.
THE COURT: I understand. That’s right.
MR. SANGER: And then 6 should also be identified as the attempt. The Court asked about it should be at least the attempt alleged with regard to Gavin Arvizo. And then 7, 8, 9 and 10 would be the same language.
THE COURT: Okay. What did you want to say, Mr. Sneddon?
MR. SNEDDON: I have no problem with that. That’s what I was telling the Court.
THE COURT: Okay.
MR. SNEDDON: I have no problem telling -- 12645

making an election. In fact, if you want to be more specific about it, you can say, with regard to Star Arvizo, that the first incident involves the one where the doors were locked, and the second one involves the incident where the door was closed but not locked.
THE COURT: That's --
MR. SNEDDON: I wasn't trying to not be definitive. I mean, we made an election. There's no secret here about what happened and I think that's -- I was misconstrued, what I was offering to do for the Court. Seems like the more I offer, the worse it gets for me, so I'm willing to do that.
THE COURT: I misunderstood what you were saying.
MR. SNEDDON: Well --
THE COURT: And I don't think it's getting worse for you.
MR. SNEDDON: Well, okay. I'll just let it go.
THE COURT: I think we're working out a problem that exists in all of these cases. I've never had a case involving a child molestation allegation that didn't involve the same problem, the children don't give dates and times, and you work with a difficult scenario of trying to determine when these things happened and to plead those items in a good way, a way that's productive. So I 12646

sympathize with the problems the prosecution has. And I think your agreement to elect is very helpful to the Court. It would be very helpful to the jury.
MR. SNEDDON: I agree. I agree.
THE COURT: And, you know, I just don't see this as a bad thing for anybody.
MR. SANGER: Maybe what the Court could do --
THE COURT: I was thinking of taking the break.
MR. SANGER: Maybe what the Court could do is take a break.
THE COURT: But before you do, what was your last suggestion?
MR. SANGER: I was just thinking that the way to word this might be, "In Count 2, the crime alleged is lewd act upon Gavin Arvizo," so you don't have to repeat it.
THE COURT: Yeah.
MR. SANGER: And then say, "alleged in the testimony" -- "the first event alleged in the testimony of Gavin Arvizo," words to that effect.
THE COURT: Well, I think I -- I would go with the language the D.A. is suggesting, so that -- "the first" is still a vague statement in terms of the child's testimony, I think.
MR. SANGER: There are two --
THE COURT: If he wants to identify -- you 12647

know, put some identifying factor, “The door is locked,” “The door is unlocked,” that’s -- something that clarifies each issue is fine with me.
MR. SANGER: He could do that in argument.
THE COURT: He could.
MR. SANGER: And I was just trying to think of a generic way to address it, because these are the Court’s instructions, obviously.
THE COURT: Right.
MR. SANGER: And rather than have the Court talk about too many facts, because you have to keep saying “alleged,” “alleged,” “alleged,” otherwise it has the impression --
THE COURT: If you’re satisfied with just identifying that Gavin is the -- the first two are Gavin’s testimony and the second two are Star’s, and the District Attorney delineating which those acts are in argument, I’m satisfied with that.
MR. SANGER: Okay. Well, I still think it should be some delineation like the first and the second. I thought --
THE COURT: If the D.A. opposes that, and I understand why he opposes that, so considering that that’s not going to work, are you satisfied with the way I’ve presented it just now?
MR. SANGER: Well, then -- no. Because I think we do have to distinguish -- the problem is we have to distinguish between Count 2 and Count 3. 12648

1 And I understand the District Attorney's saying he's
2 going to argue it that way, but I think there should
3 be something in the allegations so that the jury can
4 look at it and say, "This is what we're asked to
5 decide."
6 THE COURT: All right. We'll take a break.
7 (Recess taken.)
8 THE COURT: Okay.
9 MR. SANGER: May I address the Court on that
10 issue?
11 THE COURT: Yes.
12 MR. SANGER: Well, let me get to the point,
13 Your Honor: I'm right. How's that?
14 THE COURT: Good. We got all of that.
15 MR. SANGER: Here's why I'm right.
16 If you look at Counts 2, 3, 4 and 5 in the
17 indictment, they specifically refer to the first and
18 second incident testified to by the witness. The
19 first two say testified to by the witness. It says
20 "John Doe," but that referred to Gavin Arvizo. And
21 4 and 5 refer to the first and second incidents
22 testified to by Star Arvizo.
23 So I think the election has been made in the
24 indictment, and that's what he was indicted on. I
25 think the jury's entitled to be told that there's --
26 just that.
27 If you look at -- actually, the Count 2 does
28 not say "first," but Count 3 says, "The second 12649

molestation concerning which John Doe testified."
And then Count 4 says, "The first witnessed by James Doe." And Count 5 says, "The second witnessed by James Doe."
So it's been delineated that way, and what I would say -- what I'd suggest the Court do, because I think we're -- the defendant's entitled to have this kind of certainty. That's what he was indicted on. That's what we --
THE COURT: I think you have a very good point.
Mr. Sneddon, do you want to say anything about that? It seems like we could just take the language from the indictment and attach it to the counts, and that -- that's pretty close to what you were saying anyway.
Do you have the indictment?
MR. SNEDDON: I do, and I'm reading it, and either -- either I have a different copy of the indictment than Mr. Sanger does or the Court, but my indictment -- I was not present when the indictment was returned, and --
THE COURT: It does. I have -- it does say that.
MR. SNEDDON: Well, that's what I said. They must have given me a different copy than the copy --
THE COURT: Would you like to approach and 12650

look at --
MR. SANGER: It's up to you. I've got it.
This is a copy.
MR. SNEDDON: The copy that Mr. Sanger is
showing me is not the copy that I have.
THE COURT: Okay.
MR. SNEDDON: So it is not -- I have special
findings as to the -- as to the conspiracy, but my
copy has no special findings as to allegations. But
if that is what the Court has, and if those
elections have already been made, I don't have a
problem with them.
THE COURT: Okay. That's what I have, and --
MR. SNEDDON: Okay. And that's the
indictment that's filed with the Court?
THE COURT: Yes. This is --
MR. SNEDDON: All right
THE COURT: This is filed April 21st, 2004.
MR. SNEDDON: Then that should take care of
the problem.
THE COURT: I just had this printed off this
morning so I could deal with the lesser-included
issue.
MR. SNEDDON: All right.
MR. SANGER: One way to handle it, to keep
the number of words down to a minimum, would be to
indicate in the paragraph that immediately precedes
the list of Count 2, 3, 4, 5, where it starts, "The 12651

accusatory pleading also alleged the following crimes to have been committed by the defendant," and then put "against Gavin Arvizo," or some words to that effect, so you don't have to say he's the alleged victim in all --

THE COURT: That's a good point. Yes, let's do it that way. And then as to each one, you just use the indictment language.

MR. SANGER: So simply say, I think, to economize on words, "The first alleged incident testified to by Gavin Arvizo," and then the same language, "the second," and then Count 4 would be, "The first alleged incident testified to by Star Arvizo," and "the second."

THE COURT: Okay. That's what we'll do. Now, on --

MR. BEEBE: As to 7 through 10 --

THE COURT: 7 through 10 is the same language there?

MR. SANGER: That should be -- my understanding is those mirror the other counts, so it would be the same language, I would take it.

THE COURT: Is that -- I agree.

MR. SNEDDON: (Nods head up and down.)

THE COURT: Yeah, okay. Same language.

MR. BEEBE: And do you want that language spelled out, or would it be enough to refer to "as described in Count 2," "as described in Count 3"? 12652

THE COURT: Yeah, I think that would be fine.
MR. SANGER: I think that would be good, yes.
THE COURT: And then on 17.01, you suggested that we should add Count 6, the attempt, the language in there; is that right?
MR. SANGER: Yes, Your Honor.
THE COURT: So, did you get that, Jed?
MR. BEEBE: I'm sorry?
THE COURT: 17.01, we're going to add the Count 6 language, a sentence involving Count 6.
MR. BEEBE: All right.
THE COURT: Between --
MR. BEEBE: Well, if we -- if we have these identified, we could actually use 17.02.
THE COURT: Just use 17.02?
MR. SNEDDON: That's what I think. I don't think you should be using 17.01.
THE COURT: All right. Then we don't need 17.01?
MR. SANGER: I still think we need 17.01. Let me look at 17.02 again, but I don't think it covers the same subject matter. 17.01 makes it clear --
THE COURT: Yeah, I agree with Mr. Sanger. We need both. So put in the language on 6, just a sentence after, the same sentence after. Okay. Now what I propose to do is give you 12653

my rulings on your specials. I really think I've taken care of all of the problems and issues that you raised through your specials, and what I want to do is give you my rulings and -- and then we need to get these instructions printed so that when the jury comes in, I can give them all copies.
MR. SANGER: One housekeeping matter.
THE COURT: Yes.
MR. SANGER: If the Court is inclined to do it, based on prior experience, it would be very nice if the pages could be numbered.
THE COURT: I'm not able to do that at this point. We've pushed ourselves to the limit here, so I'm going to take my package to be printed, with my greasy prints on them and everything.
MR. SANGER: I was thinking maybe a handwritten number on the bottom. It's up to the Court.
THE COURT: Well, if we can do it, I will, I've got staff standing by ready to make these copies, and it's going to take a while.
The defense has submitted special instructions, and basically I'm telling you that I considered all of those in revamping the instructions that we've all gone through up until today, up until now, today.
But for the record, I will -- I reject Special Instruction No. 1, because it's incorporated 12654

in the Court's Instruction C and C-1.
I will reject No. 2. I've already made a
ruling on that.
The next one, No. 3, I reject that, because
I now believe that it's covered by 17.01 and 4.71.5.
Special Instruction No. 4 I reject, as it is
adequately covered by CALJIC 2.50.01.
On Special Instruction No. 6, this is the
one about the sheriff's interview of Gavin, is
adequately covered by the Court's proposed -- or the
Court's Instruction C.
On Special Instruction No. 7 re Janet's
assertion of the Fifth Amendment, I am using CALJIC
2.25, and your proposal is contrary to that. So I
reject your special instruction and I will give
CALJIC 2.25.
As to Special Instruction No. 8 re evidence
of Janet's purported welfare fraud, I reject,
because that is covered under both CALJIC 2.20 and
2.23.1. The effect of using No. 8, if I did, which
I reject, would be to put an undue emphasis on this
evidence.
Special Instruction No. 9, the Court -- this
is the instruction considering Mrs. Montgomery's
grant of -- Miss Montgomery's grant of immunity.
This is adequately covered by CALJIC 2.20 and
2.23.1. Again, I reject this because it puts an
undue emphasis on this evidence. 12655

Special Instruction No. 10, which was a request to have the jury not consider the invocation of the attorney-client privilege by Geragos, I reject that because CALJIC 2.26 is a better instruction and does not unduly emphasize that evidence.

And finally, Special Instruction No. 11 instructs -- is concerning possible discussion by witnesses of their testimony out of court. And I think that 2.20 instructs the jury to take into account the attitude of the witness toward this action or towards the giving of testimony, and I therefore refuse No. 11.

Those are my rulings. And we're -- we will now recess, print the instructions, and if the attorneys will stand by, be available, let's say at 11:15, we have to get you copies and get a final look at what we've got.

MR. SNEDDON: Are you deferring, for now, the motion that we filed on the comment during argument?

THE COURT: Oh.

MR. SNEDDON: I mean, we can take it up after you instruct, when the jury's done. We're probably going to have time.

THE COURT: That's a good thing, because I need to get these instructions.

MR. SNEDDON: That's what I figured. 12656

MR. SANGER: I was going to say, I can make it easy. The motion we're talking about is the limitation on the instruction on arguing why --
THE COURT: Yeah.
MR. SANGER: -- the defendant did not take the stand. And I don't think we disagree that it's inappropriate to give specific reasons.
THE COURT: All right.
MR. SANGER: I don't think we disagree with that, and that could be handled by an objection. It's been briefed.
THE COURT: All right.
MR. SNEDDON: I'm trying to avoid that objection, so --
MR. SANGER: I don't think it's going to happen is what I'm saying.
THE COURT: All right.
MR. SNEDDON: Okay. I'll let you get --
THE COURT: There's an agreement that your statement of the law is correct, and I will confirm and they agree, and if something happens, object.
MR. SNEDDON: Sounds good.
THE COURT: Thank you.
MR. SANGER: I'm sorry, we're back -- we can be off the record, but we're back at 11:15 to get the instructions, and the jury's coming in at ten minutes of 12:00?
THE COURT: Yes. 12657

MR. SANGER: Okay. Thank you.
THE COURT: And if I need something -- I'll call you if something comes up, but I think we're ready to go.
MR. SANGER: We're right here. We'll be available.
(Recess taken.)

(The following proceedings were held in open court in the presence and hearing of the jury:)

THE COURT: Good afternoon.
MR. MESEREAU: Good afternoon, Your Honor.
MR. AUCHINCLOSS: Good afternoon.
THE COURT: (To the jury) Today I'm going to instruct you on the law, and tomorrow and Friday you will hear the arguments of counsel.
I'm giving you copies of the instructions.
There's one thing that is not in the instructions, and I want to tell you now, and that is that during -- from now and through the deliberations, to the reaching of a verdict, you must leave your notes and your instructions here at court when you go home in the evening.
At the end of the trial, I will allow you to take your notes and the instructions with you, but you just can't take them home during deliberations. 12658

Everyone got that?
THE BAILIFF: You're going to have to talk
louder for --
THE COURT: Are you having trouble hearing
that? Why didn't I know that?
THE BAILIFF: This one picks up better.
THE COURT: I'll get my voice here in a
minute.
THE BAILIFF: Also, they have instructions,
but they're turned face down, so when you want them
to, you need to tell them to turn them over.
THE COURT: All right. Thank you.
You have your -- a copy of your
instructions, and so you can follow along and keep
them during your deliberations. You can look at
them as we go along.
Members of the jury:
You have heard all of the evidence and you
will hear the arguments of the attorneys, and it is
now my duty to instruct you on the law that applies
to this case. The law requires that I read the
instructions to you. You will have these
instructions in their written form in the jury room
to refer to during your deliberations.
You must base your decision on the facts and
the law.
You have two duties to perform. First, you
must determine what facts have been proved from the 12659

evidence received in the trial and not from any other source. A fact is something proved by the evidence or by stipulation. A stipulation is an agreement between attorneys regarding the facts. Second, you must apply the law that I state to you to the facts, as you determine them, and in this way arrive at your verdict and any finding you are instructed to include in your verdict. You must accept and follow the law as I state it to you, regardless of whether you agree with it. If anything concerning the law said by the attorneys in their arguments or at any other time during the trial conflicts with my instructions on the law, you must follow my instructions. You must not be influenced by pity for or prejudice against a defendant. You must not be biased against a defendant because he has been arrested for the offense, charged with a crime, or brought to trial. None of these circumstances is evidence of guilt and you must not infer or assume from any or all of them that a defendant is more likely to be guilty than not guilty. You must not be influenced by sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the People and the defendant have a right to expect that you will conscientiously consider and weigh the evidence, apply the law, and reach a just verdict regardless of the consequences. 12660

You each have a copy of the instructions that I am now reading to you. You may take notes on your copy, if you wish. An official copy of the instructions will be provided to the jury for use during deliberations. You should not make notes or deface the official copy in any way.

If any rule, direction or idea is repeated or stated in different ways in these instructions, no emphasis is intended and you must not draw any inference because of its repetition. Do not single out any particular sentence or any individual point or instruction and ignore the others. Consider the instructions as a whole and each in light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

Statements made by the attorneys during the trial are not evidence. However, if the attorneys have stipulated or agreed to a fact, you must regard that fact as proven as to the party or parties making the stipulation.

If an objection was sustained to a question, do not guess what the answer might have been. Do not speculate as to the reason for the objection.

Do not assume to be true any insinuation suggested by a question asked a witness. A question is not evidence and may be considered only as it 12661

helps you to understand the answer. Do not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken by the Court; treat it as though you had never heard of it. You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. When a witness has testified through a Certified Court Interpreter, you must accept the English interpretation of that testimony even if you would have translated the foreign language differently.

You must not independently investigate the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments, or consult reference works or persons for additional information.

You must not discuss this case with any other person, including, but not limited to spouses, spiritual leaders or advisors, or therapists, except a fellow juror during deliberations when all 12 of you are together in the jury room, and then only after the case is submitted to you for your decision and only when all 12 jurors are present in the jury room.

Notes are only an aid to memory and should not take precedence over recollection. A juror who does not take notes should rely on his or her 12662

recollection of the evidence and not be influenced by the fact that other jurors do take notes. Notes are for the note-taker's own personal use in refreshing his or her recollection of the evidence. Finally, should any discrepancy exist between a juror's recollection of the evidence and a juror's notes, or between one juror's recollection and that of another, you may request that the court reporter read back the relevant testimony, which must prevail.

The plaintiff in this matter is the People of the State of California. The defendant is Michael Joe Jackson.

The defendant is accused of having committed the following crimes:

In Count 1, the crime alleged is conspiracy to commit the crimes of extortion, false imprisonment or child abduction;

The date of the alleged crime is between February 1, 2003, and March 31, 2003;

The accusatory pleading also alleges the following crimes to have been committed by the defendant against Gavin Arvizo on or about and between February 20th, 2003, and March 12th, 2003:

In Count 2, the crime alleged is lewd act upon a child, the first alleged molestation testified to by Gavin Arvizo;

In Count 2, the crime alleged is lewd act 12663

upon a child -- excuse me.
In Count 3, the crime alleged is lewd act
upon a child, the second alleged molestation
testified to by Gavin Arvizo;
In Count 4, the crime alleged is lewd act
upon a child, the first alleged molestation
witnessed by Star Arvizo;
In Count 5, the crime alleged is lewd act
upon a child, the second alleged molestation
witnessed by Star Arvizo;
In Count 6, the crime alleged is attempt to
commit a lewd act upon a child;
In Count 7, the crime alleged is
administering an intoxicating agent to assist in the
commission of a felony, as alleged in Count 2;
In Count 8, the crime alleged is
administering an intoxicating agent to assist in the
commission of a felony, as alleged in Count 3;
In Count 9, the crime alleged is
administering an intoxicating agent to assist in the
commission of a felony, as alleged in Count 4;
In Count 10, the crime alleged is
administering an intoxicating agent to assist in the
commission of a felony, as alleged in Count 5.
In addition to deciding if a defendant is
guilty of the crime or crimes with which he is
accused, you must also consider whether a defendant
is guilty of any crime that is lesser to that 12664

charged. You will be more fully instructed on this subject later. However, in general, a defendant may be found guilty of a lesser crime if the jury unanimously concludes that the defendant, while not guilty of the crime charged, is guilty of a lesser crime.

In this case, the counts with lesser charges are:

One: In the Counts 7 through 10, namely, administering an intoxicating agent to assist in the commission of a felony, the lesser crime is furnishing alcohol to a minor, a misdemeanor.

The word "willfully" when applied to the intent with which an act is done or omitted means with a purpose or willingness to commit the act or to make the omission in question. The word "willfully" does not require any intent to violate the law, or to injure another, or to acquire any advantage.

The word "knowingly," means with knowledge of the existence of the facts in question. Knowledge of the unlawfulness of any act or omission is not required.

To consent to an act or transaction, a person, one, must act freely and voluntarily and not under the influence of threats, force or duress; two, must have knowledge of the true nature of the act or transaction involved; and, three, must 12665

possess the mental capacity to make an intelligent
choice whether or not to do something proposed by
another person.
Merely being passive does not amount to
consent. Consent requires a free will and positive
cooperation in act or attitude.
Evidence consists of testimony of witnesses,
writings, material objects, or anything presented to
the senses and offered to prove the existence or
nonexistence of a fact.
Evidence is either direct or circumstantial.
Direct evidence is evidence that directly
proves a fact. It is evidence which, by itself, if
found to be true, establishes that fact.
Circumstantial evidence is evidence that, if found
to be true, proves a fact from which an inference of
the existence of another fact may be drawn.
An inference is a deduction of fact that may
logically and reasonably be drawn from another fact
or group of facts established by the evidence.
It is not necessary that facts be proved by
direct evidence. They also may be proved by
circumstantial evidence or by a combination of
direct and circumstantial evidence. Both direct and
circumstantial evidence are acceptable as a means of
proof. Neither is entitled to any greater weight
than the other.
However, a finding of guilt as to any crime 12666

may not be based on circumstantial evidence unless the proved circumstance are not only, one, consistent with the theory that the defendant is guilty of the crime, but, two, cannot be reconciled with any other rational conclusion.

Further, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt. In other words, before an inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, each fact or circumstance on which the inference necessarily rests must be proved beyond a reasonable doubt.

Also, if the circumstantial evidence as to any particular count permits two reasonable interpretations, one of which points to the defendant's guilt and the other to his innocence, you must adopt that interpretation that points to the defendant's innocence, and reject that interpretation that points to his guilt.

If, on the other hand, one interpretation of this evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable.

The specific intent or mental state with which an act is done may be shown by the 12667

circumstances surrounding the commission of the act.
However, you may not find the defendant guilty of
the crimes charged unless the proved circumstances
are not only, one, consistent with the theory that
the defendant had the required specific intent or
mental state, but, two, cannot be reconciled with
any other rational conclusion.
Also, if the evidence as to any specific
intent or mental state permits two reasonable
interpretations, one of which points to the
existence of the specific intent or mental state and
the other to its absence, you must adopt that
interpretation which points to its absence. If, on
the other hand, one interpretation of the evidence
as to the specific intent or mental state appears to
you to be reasonable and the other interpretation to
be unreasonable, you must accept the reasonable
interpretation and reject the unreasonable.
Certain evidence was admitted for a limited
purpose.
At the time this evidence was admitted, you
were instructed that it could not be considered by
you for any purpose other than the limited purpose
for which it was admitted.
Do not consider this evidence for any
purpose except the limited purpose for which it was
admitted.
You have been shown four different 12668

videotapes during the course of this proceeding:
One, “Living with Michael Jackson,” which has also been referred to as the “Bashir video”; two, the “outtakes video,” comprised of footage taken by Hamid Moslehi, Mr. Jackson’s videographer; three, the “rebuttal video,” made in response to the Bashir video and including comments from the Arvizo family; and, four, the Sheriff’s July 2003 interview with Gavin Arvizo. These videos are offered for limited purposes.
The video of “Living with Michael Jackson” is not offered for the truth of anything said or shown in the program, with the exception of certain identified passages. You will receive additional instruction with regard to these identified passages. The rest of the video is hearsay and cannot be considered by you to prove anything other than the fact the program aired in February of 2003 and its likely impact, if any, on Mr. Jackson’s state of mind.
You should not be biased, prejudiced or influenced in any way by the content of the video or its commercial packaging. Except for the limited specific statements that will be identified in People’s Exhibit 910, the remainder of the program should only be considered for the fact that it aired and its impact, if any, on Mr. Jackson.
The “outtakes video” was offered to provide 12669

context for the statements made in the Bashir video. None of the statements in the outtakes video may be considered for their truth, unless they are identical to the identified passages you may consider from the Bashir video.

The "rebuttal video" was offered by the Defense to dispute the claim that Mr. Jackson or his co-conspirators scripted the statements made by members of the Arvizo family in that video. The video was offered so that you could observe the demeanor of the members of the Arvizo family and determine whether their statements were scripted. None of the statements made in the rebuttal video may be considered for their truth.

The July 2003 interview of Gavin Arvizo was offered to rebut the claim that Gavin Arvizo's responses had been coached or scripted. The interview video was offered for the purpose of evaluating Gavin Arvizo's demeanor and assessing whether his responses were coached or scripted. None of the statements made in the interview video by Gavin Arvizo or the interviewers may be considered for their truth.

As I just told you, certain identified passages from the video "Living with Michael Jackson" have been offered for their truth as admissions.

An admission is a statement made by the 12670

1 defendant which does not, by itself, acknowledge his
2 guilt of the crimes for which the defendant is on
3 trial, but which statement tends to prove his guilt
4 when considered with the rest of the evidence.
5 The statements that are being offered as
6 admissions from the video "Living with Michael
7 Jackson" will be identified for you as the People's
8 Exhibit No. 910.
9 You are the exclusive judges as to whether
10 the defendant made an admission, and if so, whether
11 the statement is true in whole or in part.
12 Evidence of an oral admission of the
13 defendant not made in court should be viewed with
14 caution.
15 Neither side is required to call as
16 witnesses all persons who may have been present at
17 any of the events disclosed by the evidence or who
18 may appear to have some knowledge of these events.
19 Neither side is required to produce all objects or
20 documents mentioned or suggested by the evidence.
21 There has been evidence in this case
22 indicating that a person other than a defendant was
23 or may have been involved in the crime for which the
24 defendant is on trial.
25 There may be many reasons why that person is
26 not here on trial. Therefore, do not speculate or
27 guess as to why the other person is not being
28 prosecuted in this trial or whether he has been or 12671

will be prosecuted. Your sole duty is to decide whether the People have proved the guilt of the defendant on trial.

Evidence that at some other time a witness made statements that are inconsistent or consistent with his or her testimony in this trial may be considered by you not only for the purpose of testing the credibility of the witness, but also as evidence of the truth of the facts as stated by the witness on that former occasion.

If you believe a witness's testimony that he or she no longer remembers a certain event, that testimony is inconsistent with a prior statement or statements by him or her describing that event.

Every person who testifies under oath or affirmation is a witness. You are the sole judges of the believability of a witness and the weight to be given the testimony of each witness.

In determining the believability of a witness, you may consider anything that has a tendency reasonably to prove or disprove the truthfulness of the testimony of the witness, including, but not limited to, any of the following:

The extent of the opportunity or ability of the witness to see or hear or otherwise become aware of any matter about which the witness has testified;

The ability of the witness to remember or to communicate any matter about which the witness has 12672

testified;
The character and quality of that testimony;
The demeanor and manner of the witness while
testifying;
The existence or nonexistence of a bias,
interest, or other motive;
The existence or nonexistence of any fact
testified to by the witness;
The attitude of the witness toward this
action or toward the giving of testimony;
A statement previously made by the witness
that is consistent or inconsistent with his or her
testimony;
The character of the witness for honesty or
truthfulness or their opposites;
An admission by the witness of
truthfulness;
Past criminal conduct of a witness;
Whether the witness is testifying under a
grant of immunity.
Discrepancies in a witness's testimony, or
between a witness's testimony and that of other
witnesses, if there were any, do not necessarily
mean that any witness should be discredited.
Failure of recollection is common. Innocent
misrecollection is not uncommon. Two persons
witnessing an incident or a transaction often will
see or hear it differently. You should consider 12673

whether a discrepancy relates to an important matter or only to something trivial. A witness, who is willfully false in one material part of his or her testimony, is to be distrusted in others. You may reject the whole testimony of a witness who willfully has testified falsely as to a material point, unless, from all the evidence, you believe the probability of truth favors his or her testimony in other particulars. You are not required to decide any issue of fact in accordance with the testimony of a number of witnesses, which does not convince you, as against the testimony of a lesser number or other evidence which you find more convincing. You may not disregard the testimony of the greater number of witnesses merely from caprice, whim or prejudice, or from a desire to favor one side against the other. You must not decide an issue by the simple process of counting the number of witnesses who have testified on the opposite sides. The final test is not in the relative numbers of witnesses, but in the convincing force of the evidence. Evidence has been introduced for the purpose of showing that a witness or witnesses engaged in past criminal conduct. This evidence may be considered by you only for the purpose of determining the believability of that witness. The fact that the witness engaged in past criminal 12674

conduct, if it is established, does not necessarily destroy or impair a witness's believability. It is one of the circumstances that you may consider in weighing the testimony of that witness.

When a witness refuses to testify to any matter, relying on the constitutional privilege against self-incrimination, you must not draw from the exercise of this privilege any inference as to the believability of the witness or whether the defendant is guilty or not guilty or any other matter at issue in this trial.

When a witness refuses to testify to any matter, relying upon the exercise of a lawful privilege, you must not draw from that fact any inference as to the believability of the witness or whether the defendant is guilty or not guilty or any other matter at issue in this trial.

You should give the uncorroborated testimony of a single witness whatever weight you think it deserves. Testimony concerning any fact by one witness which you believe, whose testimony about that fact does not require corroboration, is sufficient for the proof of that fact. You should carefully review all the evidence upon which the proof of that fact depends.

Evidence has been introduced for the purpose of showing that the defendant committed crimes other than that for which he is on trial. 12675

Except as you will otherwise be instructed, this evidence, if believed, may be considered by you only for the limited purpose of determining if it tends to show:
A characteristic method, plan or scheme in the commission of criminal acts similar to the method, plan or scheme used in the commission of the offense in this case which would further tend to show the existence of the intent which is a necessary element of the crime charged;
The existence of the intent which is a necessary element of the crime charged;
A motive for the commission of the crime charged;
For the limited purpose for which you may consider such evidence, you must weigh it in the same manner as you do all other evidence in this case.
Evidence has been introduced for the purpose of showing that the defendant engaged in a sexual offense on one or more occasions other than that charged in the case.
"Sexual offense" means a crime under the laws of a state or of the United States that involves:
Any conduct made criminal by Penal Code Section 288, and that should be a sub (a), with parentheses on the "a." The elements of this crime 12676

is set forth elsewhere in these instructions.
If you find that the defendant committed a
prior sexual offense, you may not -- excuse me.
If you find that the defendant committed a
prior sexual offense, you may, but are not required
to, infer that the defendant had a disposition to
commit sexual offenses. If you find that the
defendant had this disposition, you may, but are not
required to, infer that he was likely to commit and
did commit the crime or crimes of which he is
accused.
However, if you find by a preponderance of
the evidence that the defendant committed a prior
sexual offense, or offenses, that is not sufficient
by itself to prove beyond a reasonable doubt that he
committed the crimes charged.
If you determine an inference properly can
be drawn from this evidence, this inference is
simply one item for you to consider, along with all
other evidence, in determining whether the defendant
has been proved guilty beyond a reasonable doubt of
the charged crime.
Within the meaning of the preceding
instructions, the prosecution has the burden of
proving by a preponderance of the evidence that a
defendant committed sexual offenses other than those
for which he is on trial.
You must not consider this evidence for any 12677

purpose unless you find by a preponderance of the evidence that the defendant committed the other sexual offenses.

If you find other crimes were committed by a preponderance of the evidence, you are nevertheless cautioned and reminded that before a defendant can be found guilty of any crime charged in this trial, the evidence as a whole must persuade you beyond a reasonable doubt that the defendant is guilty of that crime.

"Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that you are unable to find that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it.

You should consider all of the evidence bearing upon every issue regardless of who produced it.

Motive is not an element of the crime charged and need not be shown. However, you may consider motive or lack of motive as a circumstance in this case. Presence of motive may tend to establish the defendant is guilty. Absence of motive may tend to show the defendant is not guilty.

A defendant in a criminal trial has a constitutional right not to be compelled to testify. 12678

You must not draw any inference from the fact that a defendant does not testify. Further, you must neither discuss this matter nor permit it to enter into your deliberations in any way.

In deciding whether or not to testify, the defendant may choose to rely on the state of the evidence and upon the failure, if any, of the People to prove beyond a reasonable doubt every essential element of the charge against him. No lack of testimony on defendant's part will make up for a failure of proof by the People so as to support a finding against him on any essential element.

An admission is a statement made by the defendant which does not, by itself, acknowledge his guilt of the crimes for which the defendant is on trial, but which statement tends to prove his guilt when considered with the rest of the evidence.

You are the exclusive judges as to whether the defendant made an admission, and if so, whether the statement is true in whole or in part.

Evidence of an oral admission of the defendant not made in court should be viewed with caution.

Evidence has been received from which you may find that an oral statement of intent was made by the defendant before the offense with which he is charged was committed.

It is for you to decide whether the 12679

statement was made by the defendant.
Evidence of an oral statement ought to be
viewed with caution.
No person may be convicted of a criminal
offense unless there is some proof of each element
of the crime independent of any admission made by
him outside the trial.
The identity of the person who is alleged to
have committed a crime is not an element of the
crime. The identity may be established by an
admission.
Witnesses who have special knowledge, skill,
experience, training or education in a particular
subject have testified to certain opinions. This
type of witness is referred to as an expert witness.
In determining what weight to give to any opinion
expressed by an expert witness, you should consider
the qualifications and believability of the witness,
the facts or materials upon which each opinion is
based, and the reasons for each opinion.
An opinion is only as good as the facts and
reasons on which it is based. If you find that any
fact has not been proved, or has been disproved, you
must consider that in determining the value of the
opinion. Likewise, you must consider the strengths
and weaknesses of the reasons on which it is based.
You are not bound by an opinion. Give each
opinion the weight you find it deserves. You may 12680

disregard any opinion if you find it to be unreasonable.

In determining the weight to be given to an opinion expressed by any witness who did not testify as an expert witness, you should consider his or her believability, the extent of his or her opportunity to perceive the matters upon which his or her opinion is based and the reasons, if any, given for it. You are not required to accept an opinion, but should give it the weight, if any, to which you find it entitled.

In examining an expert witness, counsel may ask a hypothetical question. This is a question in which the witness is asked to assume the truth of a set of facts, and to give an opinion based on that assumption.

In permitting this type of question, the Court does not rule and does not necessarily find that all of the assumed facts have been proved. It only determines that those assumed facts are within the possible range of the evidence. It is for you to decide from the evidence whether or not the facts assumed in a hypothetical question have been proved.

If you should decide that any assumption in a question has not been proved, you are to determine the effect of that failure of proof on the value and weight of the expert opinion based on the assumed facts. 12681

In resolving any conflict that may exist in the testimony of expert witnesses, you should weigh the opinion of one expert against that of another. In doing this, you should consider the qualifications and believability of each witness, the reasons for each opinion and the matter upon which it is based.

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to a verdict of not guilty. This presumption places upon the People the burden of proving him guilty beyond a reasonable doubt.

"Reasonable doubt" is defined as follows: It is not a mere possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction of the truth of the charge.

In the crimes charged in Counts 1 through 10, there must exist a union or joint operation of act or conduct and a certain specific intent in the mind of the perpetrator. Unless this specific intent exists, the crime to which it relates is not committed. 12682

The specific intent required is included in the definitions of the crimes set forth elsewhere in these instructions.

The crime of conspiracy, as alleged in Count 1, requires the specific intent to agree to commit a crime and a further specific intent to commit that crime.

The crime of lewd act with a child under 14 years of age, as alleged in Counts 2, 3, 4 and 5, requires the specific intent to arouse, appeal to, or gratify the lusts or passions or sexual desires of the perpetrator or the child.

The crime of attempted lewd act with a child under 14 years of age, as alleged in Count 6, requires the specific intent to commit a lewd act with a child under 14 years of age and the specific intent to arouse, appeal to, or gratify the lusts or passions or sexual desires of the perpetrator or the child.

The crime of administering an intoxicating agent to another, as alleged in Count 7, 8, 9 and 10, requires the specific intent thereby to enable or assist the perpetrator to commit a felony.

In the crimes charged in Counts 1 through 10, or lesser crimes thereto, there must exist a union or joint operation of act or conduct and a certain mental state in the mind of the perpetrator. Unless this mental state exists, the crime to which it 12683

relates is not committed.
The mental states required are included in the definitions of the crimes set forth elsewhere in these instructions.
Defendant is accused in Count 1 of having committed the crime of conspiracy, a violation of Section 182 of the Penal Code, on or about a period of time between February 1, 2003, and March 31, 2003.
Defendant is accused in Counts 2 through 5 of having committed the crime of lewd act upon a child, a violation of Penal Code Section 288, Subdivision (a), on or about a period of time between February 20, 2003, and March 12, 2003.
Defendant is accused in Count 6 of having attempted to commit the crime of lewd act upon a child, a violation of Penal Code Section 664 and 288, Subdivision (a), on or about a period of time between February 20, 2003, and March 12th, 2003.
Defendant is accused in Count 7 through 10 of administering an intoxicating agent to assist in the commission of a felony, in violation of Penal Code Section 222, on or about a period of time between February 20, 2003, and March 12th, 2003.
In order to find the defendant guilty of the crime charged against him in a particular count, it is necessary for the prosecution to prove beyond a reasonable doubt the commission of a specific act or 12684

acts constituting that crime within the period alleged.

And, in order to find the defendant guilty of the crime charged against him in a particular count, you must unanimously agree upon the commission of the same specific act or acts constituting that crime within the period alleged. It is not necessary that the particular act or acts committed, so agreed upon, be stated in the verdict.

An attempt to commit a crime consists of two elements; namely, a specific intent to commit the crime, and a direct but ineffectual act done toward its commission.

In determining whether this act was done, it is necessary to distinguish between mere preparation on the one hand, and the actual commencement of the doing of the criminal deed on the other. Mere preparation, which may consist of planning the offense or of devising, obtaining or arranging the means for its commission, is not sufficient to constitute an attempt. However, acts of a person who intends to commit a crime will constitute an attempt where those acts clearly indicate a certain, unambiguous intent to commit that specific crime. These acts must be an immediate step in the present execution of the criminal design, the progress of which would be completed unless interrupted by some 12685

circumstance not intended in the original design.
You know, I read to my wife at night so
she'll go to sleep. I'm not having that effect
here, huh?
(Laughter.)
THE COURT: Okay. A conspiracy, as charged
in Count 1 of the Indictment, is an agreement
entered into between two or more persons with the
specific intent to agree to commit the crime of
child abduction, false imprisonment, or extortion,
and with the further specific intent to commit that
crime or crimes, followed by an overt act committed
in this state by one or more of the parties for the
purpose of accomplishing the object of the
agreement.
Conspiracy is a crime.
In order to find a defendant guilty of
conspiracy, in addition to proof of the unlawful
agreement and specific intent, there must be proof
of the commission of at least one of the acts
alleged in the Indictment to be an overt act and
that the act found to have been committed was an
overt act. It is not necessary to the guilt of the
defendant that he personally committed an overt act
if he was one of the conspirators when the alleged
overt act was committed.
The term "overt act" means any step taken or
act committed by one or more of the conspirators 12686

which goes beyond mere planning or agreement to commit a crime and which step or act is done in furtherance of the accomplishment of the object of the conspiracy.

To be an "overt act," the step taken or act committed need not, in and of itself, constitute the crime or even an attempt to commit the crime which is the ultimate object of the conspiracy. Nor is it required that the step or act, in and of itself, be criminal or an unlawful act.

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if that act or declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators.

A member of a conspiracy is not only guilty of the particular crime that to his knowledge his confederates agreed to and did commit, but is also liable for the natural and probable consequences of any crime or act of a co-conspirator to further the object of the conspiracy, even though that crime or act was not intended as a part of the agreed-upon objective and even though he was not present at the time of the commission of that crime or act.

You must determine whether the defendant is 12687

guilty as a member of a conspiracy to commit the originally agreed-upon crime or crimes, and, if so, whether the crimes alleged in Count 1 was perpetrated by co-conspirators in furtherance of that conspiracy and was a natural and probable consequence of the agreed-upon criminal objective of that conspiracy.

In determining whether a consequence is "natural and probable," you must apply an objective test based on what the defendant actually intended -- excuse me.

In determining whether a consequence is "natural and probable," you must apply an objective test based not on what the defendant actually intended, but on what a person of reasonable and ordinary prudence would have expected would be likely to occur. The issue is to be decided in light of all of the circumstances surrounding the incident. A "natural consequence" is one which is within the normal range of outcomes that may be reasonably expected to occur if nothing unusual has intervened. "Probable" means likely to happen.

The formation and existence of a conspiracy may be inferred from all circumstances tending to show that -- the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial 12688

evidence. It is not necessary to show a meeting of the alleged conspirators or the making of an express or formal agreement.

Evidence that a person was in the company of or associated with one or more other persons alleged or proved to have been members of a conspiracy is not, in itself, sufficient to prove that person was a member of the alleged conspiracy.

It is not a defense to the crime of conspiracy that an alleged conspirator did not know all the other conspirators. The members of a conspiracy may be widely separated geographically, and yet may be in agreement on a criminal design and may act in concert in pursuit of that design. The adoption by a person of the criminal design and criminal intent entertained in common by others and of its object and purposes is all that is necessary to make that person a co-conspirator when the required elements of a conspiracy are present.

Where a conspirator commits an act or makes a declaration which is neither in furtherance of the object of the conspiracy nor the natural and probable consequence of an attempt to attain that object, he alone is responsible for and bound by that act or declaration, and no criminal responsibility therefor attaches to any of his confederates.

The act or declaration of a person who is 12689

not a member of a conspiracy is not binding upon the members of the conspiracy, even if the act or declaration tended to promote the object of the conspiracy.

Evidence of the commission of an act which furthered the purpose of an alleged conspiracy is not, in itself, sufficient to prove that the person committing the act was a member of the alleged conspiracy.

Every person who joins a conspiracy after its formation is liable for and bound by the acts committed and declarations made by other members in pursuance and furtherance of the conspiracy during the time that he is a member of the conspiracy.

A person who joins a conspiracy after its formation is not liable or bound by the acts of the co-conspirators or for any crime committed by the co-conspirators before that person joins and becomes a member of the conspiracy.

Evidence of any acts done or declarations made by other conspirators prior to the time that person becomes a member of the conspiracy may be considered by you in determining the nature, objectives and purposes of the conspiracy, but for no other purpose.

A member of a conspiracy is liable for the acts and declarations of his co-conspirators until he effectively withdraws from the conspiracy or the 12690

conspiracy has terminated.
In order to effectively withdraw from a conspiracy, there must be an affirmative and good-faith rejection or repudiation of the conspiracy which must be communicated to the other conspirators of whom he has knowledge.
If a member of a conspiracy has effectively withdrawn from the conspiracy, he is not thereafter liable for any act of the co-conspirators committed after his withdrawal from the conspiracy, but he is not relieved of responsibility for the acts of his co-conspirators committed while he was a member.
No act or declaration of a conspirator committed or made after the conspiracy has been terminated is binding upon co-conspirators, and they are not criminally liable for that act.
The defendant in this case is entitled to, and must receive, your determination whether he was a member of the alleged conspiracy. You must determine whether he was a conspirator by deciding whether he willfully, intentionally and knowingly joined with any other or others in the alleged conspiracy.
Before you may return a guilty verdict of the crime of conspiracy as charged in Count 1, you must unanimously agree and find beyond a reasonable doubt that, one, there was a conspiracy to commit more -- excuse me -- there was a conspiracy to 12691

commit one or more of the crimes of extortion, child abuse and false imprisonment; and two, the defendant willfully, intentionally and knowingly joined with any other or others in the alleged conspiracy.
You must also unanimously agree and find beyond a reasonable doubt that an overt act was committed by one of the conspirators. You are not required to unanimously agree as to who committed an overt act, or which overt act was committed, so long as each of you finds beyond a reasonable doubt that one of the conspirators committed one of the acts alleged in the Indictment to be overt acts.
In this case the defendant is charged with conspiracy to commit the following public crimes:
One, a violation of Penal Code Section 278, child abduction, a felony;
Two, a violation of Penal Code Section 236, false imprisonment, a felony;
Three, a violation of Penal Code Section 518, extortion, a felony.
It is alleged that the following acts were committed in this state by one or more of the defendants and were overt acts and committed for the purpose of furthering the object of the conspiracy.
Overt Act No. 1: On or about February 4th, 2003, Michael Joe Jackson told Janet Arvizo that the lives of her children, Gavin, Star and Davellin Arvizo, were in danger due to the recent broadcast 12692

on British television of the documentary “Living with Michael Jackson,” in which Gavin Arvizo appears with Michael Joe Jackson. Michael Joe Jackson did tell Janet Arvizo that she and her three children would be flown to Miami to participate in a press conference, which press conference never took place.

Overt Act No. 2: On and between February 4th, 2003, and February 5th, 2003, the documentary “Living with Michael Jackson,” in which Gavin Arvizo appears, was broadcast in the United States. Michael Joe Jackson did personally prevent the Arvizo family from viewing the program while at the Turnberry Resort Hotel in Miami, Florida.

Overt Act No. 3: On and between February 7th, 2003, and February 8th, 2003, Michael Joe Jackson did return the Arvizo family to Santa Barbara in a private jet. On the flight, Michael Joe Jackson did sit with Gavin Arvizo and did give him an alcoholic beverage, concealed in a soft drink can. Michael Joe Jackson did then present Gavin Arvizo with a wristwatch. Michael Joe Jackson did tell Gavin Arvizo that the watch was worth $75,000. Michael Joe Jackson did tell Gavin Arvizo not to tell anyone about them drinking alcoholic beverages together.

Overt Act No. 4: On or about February 8th, 2003, Michael Joe Jackson brought the Arvizo family to Jackson’s Neverland Ranch, where Gavin, Star, 12693

Davellin and Janet Arvizo remained for approximately five days.

Overt Act No. 5: On and between February 6, 2003, and February 12th, 2003, in both Miami, Florida, and at Neverland Ranch in Santa Barbara County, Ronald Konitzer and Dieter Weizner did tell Janet Arvizo that there were death threats made against her and her children by unknown individuals. They did further tell Janet Arvizo that the only way to assure the safety of her family was for the Arvizos to participate in the making of a "rebuttal" video favorable to Michael Joe Jackson.

Overt Act No. 6: On and between February 12th, 2003, and February 15th, 2003, after the Arvizo family had departed Neverland Ranch in the night, Frank Cascio, aka Frank Tyson, did telephone Janet Arvizo and urge her to return with her children to Neverland Ranch and did say, "I know Michael would love for you to come back to the ranch, for the safety of all concerned," and "Now is not the right time to be out there alone," and "Never turn your back on Michael," and "Michael wants to see you and the family," and "You need to go back to the ranch and see Michael, because he is very concerned," and "Even staying another night alone is not safe."

Frank Cascio, aka Frank Tyson, did tell Janet Arvizo that, "We would love for you to go on 12694

tape and just say something beautiful about Michael." Frank Cascio did assure Janet Arvizo and Gavin Arvizo that Ronald Konitzer and Dieter Weizner would no longer be present at the ranch if they returned. He did state, "They are not there; I know that for a fact."

Overt Act No. 7: On and between February 2003 and March 2003, at Neverland Ranch, Frank Cascio, aka Frank Tyson, did threaten Star Arvizo that Cascio did have ways to make Star Arvizo's grandparents "disappear." Frank Cascio did tell Gavin Arvizo, "I could have your mother killed."

Overt Act No. 8: On or about February 14th, 2003, and February 15th, 2003, Michael Joe Jackson's personal chauffeur, Gary Hearn, did drive to Janet Arvizo's Los Angeles residence and did transport her and her children back to Neverland Ranch in Santa Barbara County.

Overt Act No. 9: On and between February 14th, 2003, and February 15th, 2003, upon the Arvizo family's return to Neverland Ranch, Ronald Konitzer and Dieter Weizner were, in fact, present; whereupon Janet Arvizo asked to leave with her children. Ronald Konitzer and Dieter Weizner did tell Janet Arvizo that she was free to depart; however, her children must remain at the ranch.

Overt Act No. 10: During the month of February 2003, in Santa Barbara County, California, 12695

Michael Joe Jackson's personal security staff was directed in writing not to allow Gavin Arvizo to leave Neverland Ranch.

Overt Act No. 11: During the month of February 2003, Frederic Marc Schaffel, Christian Robinson and an unknown attorney did prepare a script of questions to be asked of the Arvizo family during the filming of the "rebuttal" video by Hamid Moslehi.

Gee. I need a drink - of water.

I'll try that one again.

During the month of February 2003, Frederic Marc Schaffel, Christian Robinson, and an unknown attorney did prepare a script of questions to be asked of the Arvizo family during the filming of the "rebuttal" video by Hamid Moslehi, Michael Joe Jackson's personal videographer.

Overt Act No. 12: On or about February 19th, 2003, the Arvizo children were transported by Hamid Moslehi from Neverland Ranch to Moslehi's home in the San Fernando Valley, and on the same date, Vinnie Amen did transport Janet Arvizo to Hamid Moslehi's residence for the filming of the "rebuttal" video.

Overt Act No. 13: On or about February 19th, 2003, and February 20th, 2003, in Los Angeles County, between 11 p.m. and 1 a.m., the employees and associates of Michael Joe Jackson did tape the 12696

"rebuttal" video, an interview of the Arvizo family, in the presence of Vinnie Amen and Bradley Miller, a licensed private investigator. During the taping, previously scripted questions were asked of the Arvizo family.

Overt Act No. 14: On or about February 20th, 2003, Vinnie Amen did transport Janet Arvizo to Norwalk, in Los Angeles County, to obtain birth certificates of the Arvizo family for the purpose of obtaining passports and visas to travel to Brazil.

Overt Act No. 15: On and between February 25th, 2003, and March 2nd, 2003, Vinnie Amen did take the Arvizo family from Neverland Ranch to the Country Inn & Suites in Calabasas, Los Angeles County. Vinnie Amen did transport Janet Arvizo to public offices in Los Angeles County where passports showing the destinations of Italy and France and visas for the entrance to Brazil for the Arvizo family were obtained. Frederic Marc Schaffel, business partner of Michael Joe Jackson and president of Neverland Valley Entertainment, did pay expenses in connection with this activity.

Overt Act No. 16: On or about February 25, 2003, Frederic Marc Schaffel did make airline reservations for the Arvizo family to travel to Brazil on March 3rd, 2003.

Overt Act No. 17: On or about February 26th, 2003, Frederic Marc Schaffel paid Frank 12697

Cascio, aka Frank Tyson, $1,000 in connection with "vacation" expenses for the Arvizo family.

Overt Act No. 18: On or about February 27th, 2003, Frederic Marc Schaffel did pay Vinnie Amen the sum of $500 cash for costs related to the Brazilian visas of the Arvizo family.

Overt Act No. 19: On and between February 2003 and March 2003, at the Neverland Ranch, Michael Joe Jackson did have Gavin Arvizo sleep in his bedroom and in his bed.

Overt Act No. 20: On and between February 2003 and March 2003, at Neverland Ranch, Michael Joe Jackson did house Janet and Davellin Arvizo in a guest cottage on Neverland Ranch, where Janet and Davellin Arvizo slept.

Overt Act No. 21: On and between February 2003 and March 2003, at Neverland Ranch, Michael Joe Jackson did show sexually explicit materials to Gavin and Star Arvizo.

Overt Act No. 22: On and between February 2003 and March 2003, at Neverland Ranch, Michael Joe Jackson did drink alcoholic beverages in the presence of Gavin and Star Arvizo and provided alcoholic beverages to them.

Overt Act No. 23: On and between February 2003 and March 2003, Michael Joe Jackson did monitor and maintain control over the activities at Neverland Ranch by means of multiple interior door 12698

locks, proximity sensor alarm devices, and a keypad
combination lock, as well as video and telephone
surveillance equipment. Michael Joe Jackson did
personally monitor telephone conversations of Janet
Arvizo without her knowledge or permission.
Overt Act No. 24: On or about March 1,
2003, Vinnie Amen did pay the rent on the residence
of the Arvizo family in Los Angeles County and moved
their belongings into storage.
Overt Act No. 25: On or about March 6th,
2003, Vinnie Amen did go to John Burroughs Middle
School in Los Angeles County and he did withdraw
Gavin and Star Arvizo from their enrollment there,
telling school authorities that the children were
relocating to Phoenix, Arizona.
Overt Act No. 26: On or about March 9th,
2003, Michael Joe Jackson was told by Gavin Arvizo
that Gavin Arvizo had a medical appointment the
following day, at which time he was to give the
medical staff a 24-hour-long urine collection
specimen for laboratory analysis. Michael Joe
Jackson, in Santa Barbara County, did tell Gavin
Arvizo to cancel the appointment, because the sample
would reveal that Gavin Arvizo had been consuming
alcoholic beverages while staying at Neverland
Ranch.
On or about March 10th, 2003, in Los Angeles
County, after Janet Arvizo refused to cancel the 12699

1 medical appointment and while on the way to the
2 medical appointment, Vinnie Amen did destroy most of
3 Gavin Arvizo's collected urine specimen, intended
4 for laboratory analysis in connection with Gavin
5 Arvizo's follow-up treatment for the disease of
6 cancer.
7 Overt Act No. 27: On and between February
8 2003 and March 2003, in Los Angeles County, and as
9 revealed by a surveillance videotape located on
10 November 18th, 2003, in the office of Private
11 Investigator Bradley Miller, an unknown
12 co-conspirator conducted video surveillance of Gavin
13 Arvizo and various members of Gavin Arvizo's family,
14 including his grandmother and grandfather, his
15 mother, his mother's boyfriend, his brother and his
16 sister, at and near their respective residences and
17 elsewhere.
18 Overt Act No. 28: On or about March 31st,
19 2003, Michael Joe Jackson did direct Frederic Marc
20 Schaffel to pay Frank Cascio, aka Frank Tyson, the
21 sum of one million dollars from "Petty Cash" of
22 Neverland Valley Entertainment on behalf of Michael
23 Joe Jackson.
24 Evidence of a statement made by one alleged
25 conspirator other than at this trial shall not be
26 considered by you as against another alleged
27 conspirator unless you determine by a preponderance
28 of the evidence: 12700

1 One, that from other independent evidence
2 that at the time the statement was made a conspiracy
3 to commit a crime existed;
4 Two, that the statement was made while the
5 person making the statement was participating in the
6 conspiracy and that the person against whom it was
7 offered was participating in the conspiracy before
8 or during that time;
9 And, three, that that statement was made in
10 furtherance of the objective of the conspiracy.
11 The word “statement” as used in this
12 instruction includes any oral or written verbal
13 expression or the nonverbal conduct of a person
14 intended by that person as a substitute for oral or
15 written verbal expression.
16 Defendant is charged in Count 1 with
17 conspiracy to commit the crime of extortion, in
18 violation of Penal Code Section 518, the crime of
19 child abduction, in violation of Penal Code Section
20 278, and the crime of false imprisonment, in
21 violation of Penal Code Section 236.
22 In order to find the defendant guilty of the
23 crime of conspiracy, you must find beyond a
24 reasonable doubt that the defendant conspired to
25 commit one or more of the crimes, and you also must
26 unanimously agree as to which particular crime or
27 crimes he conspired to commit.
28 If you find the defendant guilty of 12701

conspiracy, you will then include a finding on the question as to which such alleged crimes you unanimously agree the defendant conspired to commit. A form will be supplied to you for that purpose.

Defendant is accused in Count 1 of having conspired to commit the crime of false imprisonment by violence or menace, a violation of Section 236 of the Penal Code.

Every person who, by violence or menace, violates the liberty of another person by intentionally and unlawfully restraining, confining or detaining that person and compelling that person to stay or go somewhere without his or her consent is guilty of the crime of false imprisonment by violence or menace, in violation of Penal Code Section 236.

"Violence" means the exercise of physical force used to restrain over and above the force reasonably necessary to effect the restraint.

"Menace" means a threat of harm, express or implied, by word or act.

False imprisonment does not require that there be confinement in a jail or prison.

In order to prove this crime, each of the following elements must be proved:

One, a person intentionally and unlawfully restrained, confined, or detained another person, compelling him or her to stay or go somewhere; 12702

Two, the other person did not consent to the restraint, confinement, or detention;
And, three, the restraint, confinement or detention was accomplished by violence or menace.
In the crime of false imprisonment, there must exist a union or joint operation of act or conduct and general criminal intent. General criminal intent does not require an intent to violate the law. When a person intentionally does that which the law declares to be a crime, he is acting with general criminal intent, even though he may not know that his act or conduct is unlawful.
However, before a person can be convicted of conspiracy to commit false imprisonment, the specific intents to commit conspiracy must be proved.
Defendant is accused in Count 1 of having conspired to commit the crime of child abduction, a violation of Section 278 of the Penal Code.
Every person, not having a right of custody, who maliciously takes and entices away, keeps, withholds or conceals any child with the specific intent to detain or conceal the child from a lawful custodian is guilty of the crime of child abduction, in violation of Penal Code Section 278.
In order to prove this crime, each of the following elements must be proved:
One, a person took, enticed away, kept, 12703

1 withheld, or concealed a child;
2 Two, that person did not have a right of
3 custody of the child;
4 Three, that person acted maliciously;
5 And four, with the specific intent to detain
6 or conceal the child from a lawful custodian.
7 As used in the crime of child abduction:
8 “Child” means a person under the age of 18.
9 “Maliciously” means with intent to vex,
10 annoy or injure another person, or to do a wrongful
11 act.
12 “Fraudulently” includes all surprise, trick,
13 cunning, and unfair ways by which one person
14 deceives or attempts to deceive another.
15 “Keeps” or “withholds” means retains
16 physical possession of a child whether or not the
17 child resists or objects.
18 “To entice” means to allure, to attract, to
19 draw on, or to lead astray by exciting hope or
20 desire. It does not necessarily include any
21 domination over the child’s will.
22 “Detain” means to delay, to hinder, or to
23 retard. It does not necessarily include force or
24 menace.
25 “Lawful custodian” means a person, guardian
26 or public agency having a right to custody of a
27 child.
28 “Abduct” means take, entice away, keep, 12704

1 withhold, or conceal.
2 The fact that a minor child decided to go,
3 or to stay, or decided voluntarily to accompany an
4 adult is not a defense to the crime of unlawfully
5 taking, obtaining, concealing, or enticing away a
6 minor child.
7 Defendant is accused in Counts 2, 3, 4 and 5
8 of having committed the crime of lewd act with a
9 child, in violation of Section 288, Subdivision (a),
10 of the Penal Code.
11 Every person who willfully commits any lewd
12 or lascivious act upon or with the body, or any part
13 or member thereof, of a child under the age of 14
14 years, with the specific intent of arousing,
15 appealing to, or gratifying the lust or passions or
16 sexual desires of that person or that child, is
17 guilty of the crime of committing a lewd or
18 lascivious act upon the body of a child, in
19 violation of Penal Code Section 288, Subdivision (a).
20 A “lewd or lascivious act” is defined as any
21 touching of the body of a child under the age of 14
22 years with the specific intent to arouse, appeal to,
23 or gratify the sexual desires of either party. To
24 constitute a lewd or lascivious act, it is not
25 necessary that the bare skin be touched. The
26 touching may be through the clothing of the child.
27 The law does not require as an essential
28 element of the crime that the lust, passions, or 12705

sexual desires of either of such persons be actually
aroused, appealed to, or gratified.
It is no defense to this charge that a child
under the age of 14 years may have consented to the
alleged lewd or lascivious act.
In order to prove this crime, each of the
following elements must be proved:
A person touched the body of a child;
The child was under 14 years of age;
And, three, the touching was done with the
specific intent to arouse, appeal to, or gratify the
lust, passions or sexual desires of that person or
the child.
It is not essential to a finding of guilt on
a charge of lewd acts with a child under the age of
14 years that the testimony of the witness with whom
the sexual relations is alleged to have been
committed be corroborated by other evidence.
Is it time for a break? I think so. We're
very close, but let's take a break.
(Recess taken.)
THE COURT: All right.
Evidence has been presented to you
concerning Child Sexual Abuse Accommodation
Syndrome. This evidence is not received and must
not be considered by you as proof that the alleged
victim's molestation claim is true.
Child Sexual Abuse Accommodation Syndrome 12706

research is based upon an approach that is completely different from that which you must take to this case. The syndrome research begins with the assumption that a molestation has occurred and seeks to describe and explain common reactions of children to that experience. As distinguished from the research approach, you are to presume the defendant innocent. The People have the burden of proving guilt beyond a reasonable doubt.

You should consider the evidence concerning the syndrome and its effect only for the limited purpose of showing, if it does, that the alleged victim's reactions, as demonstrated by the evidence, are not inconsistent with him having been molested.

Defendant is accused in Count 1 of having conspired to violate 518 of the Penal Code.

Every person who obtains property or other things of value from another with his or her consent, which consent has been induced by a wrongful use of fear, is guilty of the crime of extortion, in violation of Penal Code Section 518.

In order to prove this crime, each of the following elements must be proved:

One, a person obtained property or something of value from the alleged victim;

Two, the property or thing of value was obtained with the consent of the alleged victim;

Three, the alleged victim's consent was 12707

induced by the wrongful use of fear;
And, four, the person who wrongfully used
fear did so with the specific intent to induce the
alleged victim to consent to the giving up of his or
her property or thing of value.
The terms “property” and “something of
value,” as used in the law of extortion, include
both tangible and intangible property to which a
monetary value can be found. Intangible property
includes every benefit and legal right belonging to
a person and susceptible of being enjoyed, exercised
or disposed of by him or her. Examples include a
person’s personal identification number, PIN number,
for access to his or her bank account, or a person’s
right to pursue available legal remedies, and a
person’s exclusive right to make use of his or her
name or likeness for commercial purposes.
Fear may be induced by a threat to inflict
an unlawful injury on the person threatened or a
third person.
The words “unlawful injury” mean an injury
which, if inflicted, would create civil liability
against the person doing it and would support a
civil action against the person. A threat to do
that which one has a legal right to do is not a
threat to do an unlawful injury.
To constitute extortion, the fear induced by
the threat must be the operating or inducing cause 12708

which produces consent and results in the property or other thing of value being delivered to another. If some other cause is the primary and controlling cause for the consent to the property or thing of value being delivered to another, the crime of extortion has not been proved.

As used in the law of extortion, "consent" is obtained from the person threatened when property or other thing of value is turned over to another with the understanding that the person threatened will be saved from injury to the person threatened or a third person. The delivery of the property or other thing of value is the lesser of two unpleasant alternatives. Consent, as used in the law of extortion, exists under these circumstances notwithstanding the fact that the person threatened may violently protest in his or her own mind against the circumstances which compel the choice. A coerced and unwilling consent compelled by the wrongful use of force or fear constitutes consent in extortion.

Defendant is accused in Count 7, 8, 9 and 10 of having committed the crime of administering an intoxicating agent to assist in the commission of a felony.

Any person who administers to another any intoxicating agent with the intent to enable or 12709

assist himself or any other person to commit a felony is guilty of the crime of administering an intoxicating agent to assist in the commission of a felony.

In order to prove this crime, each of the following elements must be proved:

One, administers to another any intoxicating agent;

Two, with the specific intent to enable or assist himself or any other person to commit a felony.

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the crime charged, you may nevertheless convict him of any lesser crime if you are convinced beyond a reasonable doubt that the defendant is guilty of the lesser crime.

The crime of furnishing alcohol to a minor is lesser to that of administering an intoxicating agent as charged in Count 7 through 10.

Thus, you are to determine whether the defendant is guilty or not guilty of the crimes charged in 7 through 10 or of any lesser crimes. In doing so, you have discretion to choose the order in which you evaluate each crime and consider the evidence pertaining to it. You may find it productive to consider and reach a tentative conclusion on all charges and lesser crimes before 12710

reaching any final verdict. However, the Court cannot accept a guilty verdict on a lesser crime unless you have unanimously found the defendant not guilty of the charged greater crime.

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the crime of which is he accused in Count 7, 8, 9 and 10, and you unanimously so find, you may convict him of any lesser crime provided you are satisfied beyond a reasonable doubt that he is guilty of that crime.

You will be provided with guilty and not guilty verdict forms for the crime charged in Count 7, 8, 9 and 10, and the lesser crime thereto. The crime of furnishing an alcoholic beverage to a person under 21 years is a lesser crime to that of administering an intoxicating agent to assist in the commission of a felony.

Thus, you are to determine whether the defendant is guilty or not guilty of the crime charged in Count 7, 8, 9 or 10 or of any lesser crime. In doing so, you have discretion to choose the order in which you evaluate each crime and consider the evidence pertaining to it. You may find it to be productive to consider and reach tentative conclusions on all charged and lesser crimes before reaching any final verdicts.

Disregard the instructions previously given which requires that you return but one verdict form 12711

as to Counts 6, 7, 8, 9 and 10.
Before you return any final or formal
verdict, you must be guided by the following:
One, if you unanimously find the defendant
guilty of the crime of which he is accused in Count
7, 8, 9 and 10, your foreperson shall sign and date
the corresponding verdict form. All other verdict
forms as to Count 7, 8, 9 and 10 must be left
unsigned;
Two, if you are unable to reach a unanimous
verdict as to the crime of which the defendant is
accused in Count 7, 8, 9 or 10, do not sign any
verdict form as to the count or counts as to which
you are in disagreement and report your disagreement
to the Court;
Three, the Court cannot accept a guilty
verdict on a lesser crime unless the jury also
unanimously finds and returns a signed verdict form
of not guilty as to the charged greater crime;
Four, if you unanimously agree and find the
defendant not guilty of the crime with which he is
charged in Count 7, 8, 9 or 10, but cannot reach a
unanimous agreement as to the lesser crime, your
foreperson should sign and date the not guilty
verdict form as to the charged crime and report your
disagreement as to the lesser crimes to the Court.
Every person who unlawfully sells,
furnishes, gives or causes to be sold, furnished or 12712

given away any alcoholic beverage to any person under the age of 21 is guilty of a violation of Business & Professions Code Section 25658, Subdivision (a), a misdemeanor.

In order to prove this crime, each of the following elements must be proved:

One, Defendant Michael Jackson furnished, gave or caused to be furnished or given away an alcoholic beverage to Gavin Arvizo;

And, two, Gavin Arvizo was under the age of 21 years.

In the crime of furnishing an alcoholic beverage to a person under 21 years, which is a lesser crime of the crime charged in Count 7, 8, 9 and 10 of the Indictment, there must exist a union or joint operation of act or conduct and general criminal intent. General criminal intent does not require an intent to violate the law. When a person intentionally does that which the law declares to be a crime, he is acting with general criminal intent even though he may not know that his act or conduct is unlawful.

The defendant is accused of having committed the crime of a lewd act upon a child under 14 in Counts 2 through 5. Similarly, the defendant is accused in Count 6 of having attempted to commit the crime of a lewd act upon a child. Also, the defendant is accused in Count 7 through 10 of having 12713

committed the crime of administering an intoxicating agent to assist in the commission of a felony or the lesser-included offense of furnishing alcohol to a minor.

The prosecution has introduced evidence for the purpose of showing that there is more than one act upon which a conviction for each count may be based. Defendant may be found guilty if the proof shows beyond a reasonable doubt that he committed any one or more of the acts. However, in order to return a verdict of guilty as to any individual count, all jurors must agree that he committed the same act or acts. It is not necessary that the particular act agreed upon be stated in your verdict.

Each count charges a distinct crime. You must decide each count separately. The defendant may be found guilty or not guilty of any or all of the crimes charged in Counts 1 through 10. Your finding as to each count must be stated in a separate verdict.

It is further alleged that at the time of the commission of the crimes charged in Counts 2 through 5, that the victim in the above offenses, Gavin Arvizo, was under the age of 14 years and that the defendant had substantial sexual conduct with Gavin Arvizo. If you find the defendant guilty of the crimes charged in Counts 2 through 5, you must 12714

determine whether or not the truth of this allegation has been proved.
"Substantial sexual conduct" means masturbation of either the victim or the defendant.
The People have the burden of proving the truth of this allegation. If you have a reasonable doubt that it is true, you must find it to be not true. Include a special finding on that question using a form that will be supplied to you.
In your deliberations, do not discuss or consider the subject of penalty or punishment. That subject must not in any way affect your verdict.
The purpose of the Court's instructions is to provide you with the applicable law so that you may arrive at a just and lawful verdict. Whether some of the instructions apply will depend upon what you find to be the facts. Disregard any instruction which applies to facts determined by you not to exist. Do not conclude that because an instruction has been given, I am expressing an opinion as to the facts.
All right. That's all of the instructions you're going to hear today. And after argument, I have just three or four or six, you know, a very small summary of concluding instructions, which I will provide you copies of at that time.
So I'm going to excuse you now, have you return at 8:30, and we will hear the final 12715

1 arguments. Have a good evening.
2 Is there any reason not to recess for today?
3 MR. MESEREAU: No, Your Honor.
4 THE COURT: All right. Court's in recess.
5 (The proceedings adjourned at 1:47 p.m.)
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REPORTER'S CERTIFICATE

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
Plaintiff,)
-vs-) No. 1133603
MICHAEL JOE JACKSON,)
Defendant.)

I, MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304, Official Court Reporter, do hereby certify: That the foregoing pages 12612 through 12716 contain a true and correct transcript of the proceedings had in the within and above-entitled matter as by me taken down in shorthand writing at said proceedings on June 1, 2005, and thereafter reduced to typewriting by computer-aided transcription under my direction.

DATED: Santa Maria, California,
June 1, 2005.

MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304
OFFICIAL COURT REPORTER